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MINING LEGISLATION

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MINING LEGISLATION

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INTRODUCTION

1. From the time the ownership or rights of the rulers were established on agricultural and other lands, it was customary to levy and collect certain specified share of produce or yield from forest lands, tanks, canals, rivers and agricultural lands. With the advancement of knowledge and along with the day to day refinement and improvements in living standards, a great number of articles made out of a vast number of different substances came into daily usage. Perhaps the earliest uses of mineral by mankind were the primitive implements made out of agate, flint, pitchstone, etc. In those days, everybody was at liberty to search and made use of these minerals without any restrictions, i.e. the discoverer had the right to a "claim".

2. From this stage, man has steadily advanced in the art of employing minerals for innumerable uses. In fact, to-day, we have become so much dependent on mineral products that the very existence of civilisation without them may be considered impossible, for they provide us with the materials for building a humble dwelling or sky scrapers, domestic appliances, agricultural implements mineral fertilizers, lighting and power, means of transport on land, sea and air, and a large variety of implements, tools and machineries used both in peace and war, besides serving as a medium of exchange of singular importance in international credit and national stability. Thus minerals have played an ever-increasing role in world affairs, and today a fervent search is being made all over the world for uranium and other atomic minerals to manufacture nuclear weapons for war purposes and to utilise atomic energy in peace.

3. Even before the industrial era, India is said to have been one of the most important centres of trading for pearls, diamonds, gold, emeralds and sapphires. It is said that before 1856 all the diamond wealth of the world originated from India. The export trade of these previous articles attracted the attention of the West and created an irresistible lure to trade and to acquire such interest. This craving profoundly affected the trend of history by encouraging exploration, inciting conquest and promoting spread of civilisation. Colombus while attempting to find a sea route to India discovered America.

4. Mineral development has become an essential factor in the economic and industrial advancement of a country, and therefore it is necessary to define the proprietory rights of minerals and the rights of those who choose

to exploit them, through proper mining legislation. However, the enactment of laws has to be a continuing process so as to take account of the new factors brought into play by changing social, economic, industrial and scientific advancements.

AIMS AND OBJECTS OF MINING LEGISLATION

5. (a) To identify the proprietory mineral rights of the individuals or the State.

(b) To define the status of the prospector or the lessee.

(c) To safeguard his rights of possession during prospecting and mining operations.

(d) To give him the right to extract and acquire title to the Mineral extracted.

(e) To lay down a procedure for acquiring and perpetuating such title.

(f) To define his obligations regarding operation and scientific development of the mines.

(g) To specify the conditions in respect of area of lease hold, period of lease, and rate and mode of payment of rents and royalties.

(h) To avoid conflict and preserve public order in the event of a rush of prospectors to the newly discovered mineral prospects.

(i) To regulate and control the development of mines and minerals.

(j) To restrict in public interest the prospecting or mining of certain minerals by private persons.

(k) To prescribe methods of mining or extraction and the limitation or prohibition of such methods.

(l) To promote safety, health and welfare of mine-workers.

THEORY OF MINERAL AND MINING CONCESSION RULES

6. The fundamental principle of any mineral concession rules is that some individual or corporation who does not own the mineral in place may intend working the mineral in that property and acquire a title to the mineral so extracted. The Mineral rights may belong to the State (Crown) or to a private owner. The stipulation under which such an individual or corporation may be allowed to prospect or work the property for one or more minerals forms the basis of mineral concession rules.

(a) In the early days when the use of minerals was not widely known or when the properties were not properly settled, any person who discovered a mineral prospect had a claim to work that property. This is known as the 'Claim System'. Under this system, too, in order to preserve public order and to avoid conflicts between the different claim holders some arrangements became necessary to demarcate the areas of their claims and to determine conditions under which they could hold their claims.

(b) The State or the owners of mineral rights at their discretion may grant prospecting licences or mining leases under specific conditions. This is known as 'Concession System'. Under this

system the operator (lessee) secures right to extract and to acquire title to the mineral extracted, as long as he fulfils the specified conditions. The lessor has the right to certain rents and royalties and to demand a reasonably uninterrupted and workmanlike performance of operations.

ROYALTY

7. As used with mining, royalty may be defined as the payment to the owner of mineral rights for the privilege granted by him for exploiting the mineral. Originally referred to the Crown owner-ship and the granting of concessions on the basis of a payment to the royal owner for the mineral produced by the concessionnaire.

8. Minerals while underground have no market value, but they have potential value. When a mineral has been extracted it acquires a definite value according to its grade and its demand in the market. Therefore, when the mineral property is leased out by the owner, he does so in consideration of payment of share of the value which the mineral acquires after its extraction. This is known as "royalty".

9. Sometimes a lump sum amount known in India as "Salami" used to be paid by the lessee in consideration of grant of such concession, and only a nominal rate of royalty, irrespective of the value of the mineral was fixed for annual payment.

10. Mineral rights are not vested in the lessee but he has the right to extract and to acquire a title to mineral so extracted, subject to payment of royalty and fulfilment of other conditions of the lease covenant during the period of lease. Royalty, therefore, is a first charge on operating profits and is an item of cost to the operator.

11. From the lessor's point of view, royalty may be considered as his sale price of the mineral leased out and represents partly a return on his depleting capital (Mineral property). Therefore, it is essential that a correct assessment of a mineral deposit including its economical workability be made to arrive at an appropriate rate of royalty.

12. The basis for calculating the royalty so far has been the pit mouth value of the mineral i.e. the highest price at which the mineral can be sold at the mine. If the mineral has no local market the pit mouth value can be worked back from the final sale value at the market by deducting transport, handling, dressing, processing and other incidental charges.

DEAD RENT (Minimum royalty)

13. Usually a minimum rent per unit area leased out is fixed which the lessee has to pay to the owner on the total area leased out. This is based on the assumption of certain minimum yearly production. Sometimes a lump sum may be fixed on a similar assumption. The underlying principle of fixing a Dead Rent or Minimum Royalty is that the lessor is assured of reasonably constant performance of effective operations so that his capital represented by property shall not be unduly idle, and it accrues a minimum return. Therefore, when the royalty computed on the production exceeds the Dead Rent, only royalty becomes payable and not both. High rate of Dead Rent tend to discourage unnecessary blocking of large mineral areas under one lease, while it encourages selective mining and "picking out the eyes" of the deposit.

RIGHTS AND PRIVILEGES OF THE LICENSEE/LESSEE

14. The grant of a prospecting licence or a mining lease confers the sole

right on the licensee or the lessee to undertake prospecting or mining operations on the specified lands subject to the terms and conditions stipulated therein for a specified period. The licensee is entitled to carry on essential works such as clearing of shrubs, digging, pitting, trenching, boring, erection of machinery, collection and despatch of samples for analysis and testing etc. needed for prospecting in a reasonable manner. Further he enjoys the right, subject to certain conditions, to transfer the ownership and to extent the period of the licence and above all in certain countries has the preferential right to obtain a mining lease in respect of the whole or a part of his prospect.

15. The mining lessee besides his prospecting rights, has such other rights as to win, beneficiate and carry away the minerals, to sink shafts, inclines and tunnels etc., to make roads, to get building and road materials, to use water, to use land for mining and other related purposes, to make use of timber standing on the land without any unlawful interruption from the lessor or the State. The mining lessee generally has an option to renew the lease subject to certain conditions and the right to determine the lease anytime after giving due notice and thereafter to claim refund of his security deposits and remove his movable property. He also generally has the right to hearing prior to promulgation of orders and judicial review of administrative decisions.

PROCEDURE FOR ACQUISITION AND PERPETUATION OF SUCH TITLES.

16. Different procedures are followed in different countries for the grant of mineral concessions, except for certain limitations, a principle of first come first served is generally followed. In the "Claim" system a discovery of the mineral must be made in order to get the concession for that mineral over that area. In such a case the "Claim" is required to be registered with the proper authority on payment of prescribed fee, who after varification of the authenticity of the claim and fulfilment of specified conditions by the applicant may grant a concession over that area within the prescribed maximum size limits. In the "Concession" system, applications for the grant of mineral concessions are required to be submitted along with the prescribed fee by persons satisfying the prerequisites in respect of nationality, financial status mining experience, Income-tax clearance etc. to the prescribed authority, who may grant the concession either in part or in full. After the concession has been granted, the area applied for is surveyed and demarcated by the prescribed authority usually at the expenses of the applicant and a formal contract in the form of licence or lease is executed by both the parties. The Concessionnaire or the Lessee has to make a security deposit for the due performance of the contract. Generally a person holding prospecting licence over the area has a preferential right to obtain a lease over that area. In India a person applying for prospecting licence or a mining lease must have a certificate of approval. Any person who is an Indian national can obtain a certificate of approval on payment of fee of Rs.500/- from the State Government concerned. A person who is not an Indian national may also be granted a certificate of approval on the payment of prescribed fee but only with the approval of the Central Government.

OBLIGATIONS OF THE LESSEE

17. The foremost obligations of the licensee/lessee are to carry on work in a systematic, scientific and workman-like manner, to maintain correct and faithful account of all prospecting work done, expenses incurred and of production, despatch and sale of minerals, payment of royalties and compensation for damage to the land surface at such rates and at such times and in such manner as may be specified, and to indemnify the lessor and/or the State against all kinds of third-party claims and to comply with all labour legislation and mining laws, rules and regulations made thereunder for the purpose of regulation, conservation and development of mines and minerals.

and to ensure safety, health and welfare of mine-workers. Usually licensees/ lessees must within a specified time commence work and continue without long interruption. They may in certain cases be required either to incur a certain minimum amount of expenditure or to complete a specified amount of work. They are also prohibited not to exploit minerals other than those specified in the lease.

18. In many countries such conditions are imposed on the prospecting licensee that he cannot exploit the mineral deposit otherwise than by taking out a mining lease. Also licensee/lessee is generally obliged within certain time-limits to intimate the start of prospecting/mining operations, to report the discovery of minerals not covered in the concession, to furnish certain geological and geophysical information, to submit a report on the results of prospecting to the lessor and the state and to render the area safe, and harmless on abandonment of prospecting/mining operations or determination of the licence/lease. A licensee/lessee is also required to intimate the commencement of any prospecting and/or mining operations such as drilling boreholes, shaft sinking etc. revealing exploratory information, to keep full records of the strata passed through, to preserve drilling cores, samples etc. for a certain period, to make provision for weighment and/or measurement of minerals produced and to allow the entry for inspection, measurement sampling etc. by State officials for the purpose of enforcement of various rules and regulations. The Licensee/Lessee is also duty bound not to obstruct prospecting and mining of other minerals not specified in his contract. He is not allowed to have his operations financed and controlled by any other individual except with prior approval and to give reasonable facilities of access to the neighbouring concessionaires on payment of compensation. Also a concessionaire has to reimburse all expenses that the state and/or lessor may incur in respect of certain essential works which the concessionaire may have neglected to do.

19. In addition a mining lessee has the further obligations to keep boundary marks in good condition for demarcation purposes, to maintain uptodate plans of mine workings, to strengthen or support any workings under any public works such as railways, roads, canals, reservoirs etc., to secure and keep in good condition pits, shafts workings etc. during the subsistence of the lease and to hand them over in good condition on termination of the lease. They are also required to submit periodical reports on the progress made and the future development programmes and to grant practical training facilities to students of mining and geological institutions approved by the State. Certain notices and returns in respect of commencement of surface and mining operations, temporary discontinuance and permanent abandonment, employment of certain officials, change in name or nationality of certain employees or the concessionaires, production, sale and despatch of minerals etc. have also to be furnished by the lessee.

RIGHTS AND PRIVILEGES OF THE STATE

20. In order to ensure that the lessee enjoys his rights and discharges his obligations the State has to assume certain powers, rights and privileges in the public interest.. They are enumerated below:-

i) Avoidance of conflict and preservation of public order in the event of rush of prospectors.

ii) Right to inspect for the purposes of regulation, control and development of mines and minerals, safety, welfare and health of mine workers.

iii) To restrict in the public interest, the prospecting or mining of certain minerals by private persons.

iv) Regulation of mineral development by foreign nationals.

v) To specify the conditions in respect of area of leasehold, period of lease, and the rate of and mode of payment of rents and royalties.

vi) Right of pre-emption in times of emergency.

ROLE OF MINING LEGISLATION IN THE FORMULATION OF A SOUND MINERAL POLICY

21. Regulation affecting local and foreign investment:- Present day large-scale industrial development is based fundamentally on the production of mineral raw materials in adequate quantities, which, requires increased capital investment in the mining industry. By its very nature of being dependent on continuously depleting assets, some of the factors to be considered by an enterpreneur for investing his capital in mining are quite different from those in case of any other industry. Further a higher risk is usually involved in mineral investment due to uncertainty about geological conditions affecting mineral reserves and their grade, future cost of production particularly in new isolated areas, percentage recovery of associated minerals and by-products, the life of the mine in relation to amortisation of capital, the competitive position of the mine which may be weakened by the discovery and development of more favourable deposits by more efficient new methods of mining, milling and smelting etc. using better machinery and the price fluctuations so common to mineral markets. Also the complex nature of the plant and machinery used by the mining industry results in large capital investments. These tend to make the return on capital uncertain.

22. Usually it takes a very long time (ranging from 5 to 7 years or even more) to explore, prospect and develop a mineral deposit in order to bring it to a production stage and sometimes all this work, carried on at a considerable cost, may result in nothing worthwhile. Mining investments are inherently inflexible and involve comparatively dangerous operations. Thus mineral production requires a particularly long term planning and long periods of execution. On account of these factors mining investors expect, and deserve, better and quicker returns on their capital. The achievement of this object can be aided through legislation for the provision of subsidies, relief in taxation by grant of increased depreciation and depletion allowances etc., development rebate, grant of commercial protection etc., if adequate capital is to be attracted to this indispensable industry. Alternatively, the State can itself undertake its development.

23. The majority of under-developed countries have launched planned programme of economic development with a desire to make rapid progress to catch up with the rest of the world. This lays down heavy responsibilities on the State which may even have to invest its own funds to achieve its objectives. Statistics show that the share of the State in the new investments throughout the world has varied between 13 and 47 percent in various countries for the period 1950-54, whereas in 1957 it varied between 20 and 58 percent indicating a clear trend towards greater participation by the State in industrial investments in all countries of the world. Emphasis may either be laid on the state or on the private sector or it may be laid equally on both depending upon the general policy of the country but generally State control is maintained to a greater extent over minerals of strategic importance. The mining legislation should, therefore, be suited to conform to the policy of the State and in cases where private sector is expected to play any major role in the development of mineral resources, it is obviously desirable to create by legislation a favourable atmosphere for creation, deployment and amortisation of investments. Further whatever be the mineral policy of the State, it is obviously desirable to enunciate it clearly through public pronouncements particularly in respect of nationalisation and controls over their production, quality and marketing, export and import etc. for the guidance

of the enterpreneurs and to allay any fears or doubts that may arise in their minds.

24. Special legislative measures may be necessary for encouragement of foreign investments which may include favourable provisions for repatriation of income and capital, relief from double taxation, reasonable guarantees against nationalisation for sufficiently long periods and payment of fair compensation in cases of compulsory acquisition, etc. It is desirable that as far as practicable such foreign capital is utilised for the development of mineral industries capable of saving foreign exchange either through export earnings or import substitutions. Obviously its partic'pation in the development of basic essential or strategic minerals is required to be kept under strict control of the State.

25. Effect of Nationalisation:- There are many generally accepted arguments in favour or against nationalisation but greater need and urge is felt for nationalisation in underdeveloped rather than in industrially advanced countries. Also increasing State control of private investments, particularly that of foreign capital is usually justified on account of the general cost-benefit consideration, fixation of priorities, its effect on the country's balance of payments, its control over the development of key or strategic minerals and the need for planned economic development so that there is a balanced growth of economy most efficient utilisation of capital resources and avoiding duplication or overlapping of efforts. The fear of sudden nationalisation hampers the growth and efficient working of private sector and therefore, if private sector has to play any part in the industrial activities of the nation (and there is no reason why it should not help in the task of nation building), then it is necessary for the State to enunciate its policy in this respect in clear terms. The development of those minerals which cannot very well be carried out by the private sector, for various reasons, should of course be given priority in the programmes of the public sector undertaking to form a well integrated development plan. It is also true that policies of any State cannot remain stagnant for a long period but in cases where compelling circumstances do necessitate nationalisation of any particular industrial unit, the law of the land should provide for payment of reasonable compensation determined by impartial authorities. Also the law has to protect the rights of the State to bring about such necessary changes in the degree of control of any unit in the public interest as may be considered necessary from time to time.

26. Regulation of production:- Regulation of production by the State through legislative controls is inevitable to achieve a planned economic development. Need for regulation of production may also arise from strategic considerations, lack of adequate known resources of particular minerals, need for conservation of mineral resources for future use and to balance outputs of particular type or quality of minerals according to their consumption in certain selected industries etc. For example, in India known resources of coking coal are very limited compared to those of iron ore, therefore, a need has been felt to peg the production of coking coal to the requirements of the existing metallurgical plants in that country. Similarly minerals of strategic importance of limited known reserves may be subjected to production controls, all the more so when they are likely to be required in substantial quantities in the near future for the indigenous industries.

27. Grading and marketing:- Mineral resources may be developed either to meet the local indigenous demands or for export with or without any treatment, concentration etc., or for both. Production of finished, or semi finished products from minerals permits the full benefits such as employment opportunities development of subsidiary industries, considerable enhancement of value

and steady market demands etc. In an under-developed country on the threshhold of economic and industrial progress, the capacity to earn foreign exchange to export of finished products is small and the need to import capital goods is great and therefore to maintain a proper balance of foreign currency earnings and payments, this gap can only be filled by export of raw materials judiciously selected for the purpose, keeping the present and future local needs in view. Many a times, it becomes essential for the law to stipulate, introduce and enforce strict quality control to ensure that sub-standard minerals are not supplied either for the internal market thereby lowering the efficiency of production units and the quality of their products or for export. In order to keep up the exports and yet use our mineral resources to the fullest possible extent, lower standards of quality may be set for internal than for external markets in order to conform to the international standards or as an inducement for capturing an important market.

28. Conservation of mineral resources:- Mineral resources are wasting assets and yet modern civilisation is making more and more use of minerals necessitating a continuous increase in their production. Therefore, enforcement of conservation measures are essential not only in the interest of a particular nation but that of whole mankind. These conservation measures may provide for the systematic exploration, prospecting, mining, milling, concentration, beneficiation etc. by scientifically efficient methods, obtaining the maximum possible recovery of the subsidiary associated minerals, blending of ore, substitution of some high grade minerals by other synthetic products or lower grade minerals for certain purposes, grant of subsidies and allowances and most fruitful use of the minerals in general. Although selective mining of high grade minerals only may yield spectacularly high profits, generally it leads to lowering of valuable reserves and hence may not be beneficial from an over-all national point of view. Valuable by-products, although economically recoverable, may not be recovered by the mineowners either because of inability or unwillingness to invest additional capital or because of the possible resultant decrease in rates of profits. Mineral legislation generally empowers the State to enforce such measures as and when considered necessary.

29. Export - import policies:- Export - import in relation to minerals is deeply related to the foreign exchange balance position of the country and other economic considerations, mineral conservation policies, strategic considerations, and known resources of minerals etc., all of which are liable to change from time to time. Therefore, this policy has to be formulated for short periods only at a time and may provide for restrictions on import or export, levy of duties on imported or exported minerals and protective tariff. The main object is to encourage development of indigenous industries either for export promotion or for import substitution by, if necessary protecting them from competition with imported material particularly during the initial stages or rendering them assistance by way of reduction in railway freight, royalties and export duty or cesses and payment of subsidies to become competitive in price and quality in any or all foreign markets. Thus the role of mining legislation is very important for a sound mineral policy of any country and particularly under-developed countries.

SURVEY OF MINING LEGISLATION IN INDIA

30. History of mining legislation in India:- Minerals like gold, copper, iron, salt were worked in India even before the time of Ramayana and Mahabharata (Indian epics). Certain stipulations and conditions were laid down by the Rulers (Rajas and Tribal Chiefs) for the working of mineral properties who had mineral rights in their respective territories. They collected royalty either as a share of the minerals produced as in the case of precious

stones and diamonds or purchased the entire mineral at a specified rate from the miners and sold to the consumers at higher price, as in the case of salt. Mineral rights belonged to the Rulers and they had some system of contract with the operators for receiving rent or royalty.

31. By permanent settlement (Regulation 1 of 1793) the mineral rights were vested in Zemindars or land-holders. The Government took no legal power for the regulation of work in the mines or for the inspection of mines, to require notice to be given of the occurrence of mine accident and the protection of the miners or to regulate the employment of women and children on underground work or in respect of work which may be dangerous or unsuited to their age or sex. The first measure to classify and bring this subject into conformity with the growing needs of the country was taken on 22nd March, 1901 when an Act providing for the "Regulation and Inspection of Mines" was promulgated. This was known as the Indian Mines Act 1901 (Act No. VIII of 1901) the jurisdiction of which extended to the whole of British India including British Baluchistan the Santhal Parganas and the Pargana of Spiti. This act was amended in 1923 and further amended as Mines Act XXXV of 1952.

32. The first attempt to bring the terms of contract and lease governing the working of mines and minerals situated in State lands was attempted during 1894 when rules for the grant of Exploring and Prospecting licence and mining leases by local Governments were promulgated by the Government of India. These rules were revised in 1913. Certificate of approval, prospecting licence and mining lease were incorporated and exploring licence was discontinued. In order to provide for the regulation of mines and oil fields and for the development of minerals, Mines and Minerals (Regulation and Development) Act, 1948 was passed by the Dominion Legislature and it received the assent of the Governor General on the 8th September, 1948. This Act was substituted by Act 67 of 1957. This Act is very comprehensive. Mineral Concession Rules, 1960 and Mineral Conservation and Development Rules, 1958 have been framed under this Act. The Mineral Concession Rules provide for the manner and the persons by whom the certificate of approval, prospecting licence and mining lease can be obtained, whereas the mineral conservation and development rules provide for scientific development and mining of mineral deposits and conservation of minerals.

33. To suit the changed conditions after independence several Acts have been passed and rules framed thereunder. The following are some of the important Acts and Rules:-

(a) Mines Act, 1952:

- (i) Mines Rules, 1955.
- (ii) Mines (Posting up of Abstracts) Rules, 1954.
- (iii) Indian Coal Mines Regulations, 1957.
- (iv) Indian Metalliferous Mines Regulations, 1961.
- (v) Coal Mines Rescue Rules, 1939.
- (vi) Coal Mines Pit Head Bath Rules, 1946.

(b) Coal Mines (Conservation and Safety) Act, 1952.

- (i) Coal Mines (Conservation and Safety) Rules, 1954.

(c) Coal Grading Act, 1925.

(d) Mines and Minerals (Regulation & Development) Act, 1957.

- (i) Mineral Concession Rules, 1960.
- (ii) Minerals Conservation and Development Rules, 1958.

(e) Coal Mines Labour Welfare Fund Act, 1947.

(i) Coal Mines Labour Welfare Fund Rules, 1949.
(ii) Coal Mines Labour Welfare Office Establishment (Contributory Provident Fund) Rules, 1951.

(f) Mica Mines Labour Welfare Fund Act, 1946.

(i) Mica Mines Labour Welfare Fund Rules, 1948.
(ii) Mica Mines Labour Welfare Office Establishment (Contributory Provident Fund) Rules, 1950.

(g) Iron Ore Mines Labour Welfare Fund Act, 1960.

34. The Mining and Mineral legislation in India is very comprehensive and covers the entire field for working of mines and minerals including atomic minerals, oil fields and safety, health and welfare of workers.

CONCLUSION

35. Enactment of Mining legislation in India dealing with minerals and labour employed in mines has been particularly adopted to the conditions prevailing there from time to time and is, therefore, a continuing process. Along with the industrial, economic and scientific advancement of the country, social changes in the life of the country are taking place from day to day which may necessitate amendments to the existing legislation or its extension to different areas and/or categories of persons or even enactment of new legislation. The Government and the people of India are quite alive of this and are anxious to see that the best standards of mining practices and labour welfare are attained in the shortest possible time.

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